

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 14583 of 2004

Between:

Smt. Sandu Venkata Subbamma W/o Srinivasa Naidu
R/o Door No. 4/515 Y26, ekalavya Colony, Markapur, Prakasham District

..... PETITIONER

AND

- 1 The Revenue Divisional Officer, Markapuram Mandal, PRakasham District
- 2 The Mandal Revenue Officer, Markapuram Mandal, Prakasham District
- 3 Smt. Padma W/o Raghupathi shiva
R/o Vadde Bazar, Markapur, Markapuram Mandal, Prakasham District

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate orders, direction or Writ particularly one in the nature of Writ of Mandamus declaring the said order dated 2-08-2004 bearing No. RCH/1436/2004 issued by the respondent No.1 as illegal, arbitrary, contrary to law and principles of natural justice

Counsel for the Petitioner:MR.K.ANOOP KUMAR

Counsel for the Respondent Nos.1&2 : GP FOR CIVIL SUPPLIES

The Court at the stage of admission, made the following :

ORDER:

The petitioner was appointed as a fair price shop dealer for Ekalavya Colony Markapur Mandal, Prakasam District, in the year 1998. Her authorization was suspended by the 1st respondent through order dated 02-08-2004. The same is challenged in this writ petition.

Learned counsel for the petitioner submits that the order of suspension could have been passed only after issuance of notice and considering the explanation, as provided for under Clause 5(4) of the A.P. State Public Distribution System Control Order, 2001, (for short 'the Control Order'), and in the present case, the said procedure was not followed. He submits that the impugned order is violative of principles of natural justice and the provisions of the Control Order.

At the stage of admission, the matter was adjourned on several occasions, to enable the learned Government Pleader for Civil Supplies to obtain instructions. On the basis of the instructions received by him, learned Government Pleader submits that the impugned order deserves to be treated as the one, pending enquiry, and that it is not necessary to issue any notice.

Clause 5(4) of the Control Order mandates that the suspension, or cancellation of a dealership, of a fair price shop, can be resorted to only after conducting the enquiry. The proviso to the same is very clear. It was held by this Court in series of judgments that, if the suspension is ordered as a measure, pending enquiry, issuance of notice

is not mandatory. In other words, except where the suspension is imposed, as a measure of penalty, conducting of enquiry is not necessary.

A perusal of the order under challenge discloses that the suspension ordered against the petitioner is not a measure, pending enquiry, but almost a substantive penalty. Hence, it ought to have been preceded by enquiry and issuance of show cause notice. In fact, there is a reference to a show cause notice, dated 31-07-2004, in the impugned order. Learned counsel for the petitioner submits that the petitioner has not received any such notice. Even assuming that such a notice was issued to the petitioner, further proceedings could have been taken only after consideration of the explanation, offered, in response thereto.

While ordering notice before admission, this Court has already granted interim order on 18-08-2004, and it has been extended from time to time.

Hence, the writ petition is allowed, and the impugned order is set aside. It shall, however, open to the 1st respondent to pass appropriate orders after complying with the procedure prescribed under Clause 5(4) of the Control Order. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.07-12-2004

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To

1. The Revenue Divisional Officer, Markapuram Mandal, Prakasham District
2. The Mandal Revenue Officer, Markapuram Mandal, Prakasham District
3. 2 CCs to G.P. for Civil Supplies, High Court of A.P., High Court

Buildings, Hyderabad (OUT).

4. 2 C.D copies.

